OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

October 11, 2001

Mr. Leonard W. Peck, Jr.
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342

OR2001-4607

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 153138.

The Texas Department of Criminal Justice (the "department") received a request for a variety of information pertaining to the Interstate Compact Database. You state that you are in the process of providing the requestor with some responsive information. You claim, however, that the submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code. You also claim that portions of the submitted information are "outside the ambit of Texas Government Code, Chapter 552." We have considered your arguments, the exception you claim, and have reviewed the submitted representative sample exemplars.[1]

We note at the outset that the department failed to comply with the procedural requirements of section 552.301 of the Government Code. Section 552.301 provides that a governmental body must ask the attorney general for a decision as to whether requested information must be disclosed not later than the tenth business day after the date of receiving the written request. You acknowledge, and we agree, that the department failed to request a decision

[1] We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

from this office within the required ten business day deadline. When a governmental body fails to request a decision within ten business days of receiving a request for information, the information at issue is presumed public. *See* Gov't Code § 552.302; *see also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must demonstrate a compelling reason to withhold the requested information from disclosure in order to overcome this presumption. *See id.* Normally, a compelling reason is shown when the governmental body demonstrates that the information is confidential by law or that third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Since you claim that the submitted information is confidential by law, we will address your claims.

You claim that the submitted information in Exhibit 1 and the comments about parolees in Exhibit 3 are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code.[2] Section 508.313 accords confidentiality to the records of the Board of Pardons and Paroles. *See* Open Records Decision Nos. 190 at 2 (1978), 33 (1974); *see also* Attorney General Opinion H-427 (1974). Section 508.313 provides as follows:

> (a) All information obtained and maintained, including a victim protest letter or other correspondence, a victim impact statement, a list of inmates eligible for release on parole, and an arrest record of an inmate, is confidential and privileged if the information relates to:
>
> > (1) an inmate of the institutional division subject to release on parole, release to mandatory supervision, or executive clemency;
> >
> > (2) a releasee; or
> >
> > (3) a person directly identified in any proposed plan of release for an inmate.
>
> (b) Statistical and general information relating to the parole and mandatory supervision system, including the names of releasees and data recorded relating to parole and mandatory supervision services, is not confidential or privileged and must be made available for public inspection at any reasonable time.

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[2] Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses information protected by other statutes.

(c) The department may provide information that is confidential and privileged under Subsection (a) to:

(1) the governor;

(2) a member of the board;

(3) the Criminal Justice Policy Council in performing duties of the council under Section 413.021; or

(4) an eligible entity requesting information for a law enforcement, prosecutorial, correctional, clemency, or treatment purpose.

(d) In this section, "eligible entity" means:

(1) a government agency, including the office of a prosecuting attorney;

(2) an organization with which the department contracts or an organization to which the department provides a grant; or

(3) an organization to which inmates are referred for services by the department.

(e) This section does not apply to information relating to a sex offender that is authorized for release under Chapter 62, Code of Criminal Procedure.

(f) This section does not apply to information that is subject to required public disclosure under Section 552.029.

Gov't Code § 508.313.

You state that the individuals named in the submitted information in Exhibit 1 and in the parolee comments in Exhibit 3 are releasees or persons identified in a proposed plan of release under section 508.313. It does not appear that the requestor is eligible to receive this information under section 508.313(c). Based on our review of your representations and the submitted information, we conclude that Exhibit 1 and the parolee comments in Exhibit 3, therefore, is information that relates to releasees or persons directly identified in any proposed plan of release. Therefore, this information is confidential and privileged pursuant to section 508.313. Accordingly, you must withhold Exhibit 1 and the parolee comments in Exhibit 3 from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code.

You claim that the submitted information in Exhibit 2 and the probationer comments in Exhibit 3 are outside the ambit of the Public Information Act (the "Act"). We note that the Act generally requires the disclosure of information maintained by a "governmental body." However, while the Act's definition of a "governmental body" is broad, it specifically excludes "the judiciary." *See* Gov't Code § 552.003(1) (A), (B). In determining whether a governmental entity falls within the judiciary exception to the Act, this office looks to whether the governmental entity maintains the relevant records as an agent of the judiciary in regard to judicial, as opposed to administrative, functions. *See* Open Records Decision No. 646 at 2-3 (1996) (citing *Benavides v. Lee,* 665 S.W.2d 151 (Tex. App.--San Antonio 1983, no writ)). Applying this analysis, this office has determined that probation departments maintain probationers' records as agents of criminal courts in regard to the courts' judicial functions.

> State courts are responsible for supervising probationers. Article 42.12, section 1 of the Code of Criminal Procedure provides that state courts are responsible for "determining when the imposition of sentence in certain cases shall be suspended, the conditions of community supervision, and the supervision of defendants placed on community supervision." In Open Records Decision No. 236 (1980) at 2, this office concluded that probation officers who act according to the court's direction serve merely as the court's agents in carrying out their supervisory duties. Because district court judges have the ultimate direction and control over the supervision and rehabilitation of probationers, the probation department maintains probationers' records solely on behalf of the court. Probationers' records are therefore records of the judiciary and are not subject to the provisions of the Public Information Act.

Open Records Decision No. 646 at 4 (1996). In this case, the submitted information in Exhibit 2 and the probationer comments in Exhibit 3 constitute the records of individuals on probation or community supervision. You indicate that the department acts as the agent of the Texas supervising agencies in creating this information. Therefore, we conclude that these records are maintained by the department at the direction of criminal courts in regard to the courts' judicial functions. *See* Gov't Code §§ 76.002 (requiring district judges trying criminal cases to establish community supervision and correction departments); *see also* Open Records Decision No. 646 at 4 (1996). Consequently, we find that the submitted information in Exhibit 2 and the probationer comments in Exhibit 3 are records of the judiciary and, therefore, are not subject to the provisions of the Act. Accordingly, the department has no obligations under the Act with regard to this information.[3]

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[3] The release of the submitted information at issue in Exhibits 2 and 3 is within the discretion of the court, acting through its agent, the department. *See* Open Records Decision No. 646 at 4 n. 3 (1996) (citing Open Records Decision No. 236 at 2-3(1980)); *see also* Tex. R. Jud. Admin. 12.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

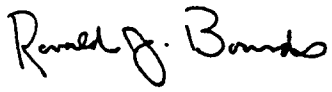
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 153138

Enc. Submitted documents

cc: Mr. Brian Collister
KMOL-TV
1031 Navarro Street
San Antonio, Texas 78205
(w/o enclosures)